

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND DIVISION**

**IN RE:**

**CASE NO. 16-70005**

**TERRY AND HEATHER FOGARTY  
DEBTORS**

**CHAPTER 13**

**DEBTOR'S MOTION TO MODIFY AND FIRST REQUEST FOR ADDITIONAL  
ATTORNEY FEES**

**This pleading requests relief that may be adverse to your interests.**

**If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.**

**A timely response is necessary for a hearing to be held. A hearing is scheduled for November 7, 2017 at 1:30 pm.**

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

TO THE HONORABLE TONY M. DAVIS, UNITED STATES BANKRUPTCY JUDGE:

NOW COMES the Chapter 13 Debtor by and through their attorney files this *Motion to Modify* and in support thereof would show the Court as follows:

1. The Debtor filed a voluntary petition for relief under Chapter 13 on January 8, 2016. The Chapter 13 Plan was confirmed on May 31, 2016. According to the Trustee's Recommendation Concerning Claims entered March 22, 2017, the Confirmed Plan provides for a distribution to unsecured creditors equal to 62% of their claims. The Trustee is not currently disbursing ongoing mortgage payments.
2. The current confirmed plan calls for monthly payments of \$3,640.00. The base amount of the plan is currently \$201,620.86.
3. The Debtor's first plan payment was due on February 8, 2016. The plan is therefore currently in month 19. The last payment posted to Debtor's case was in July, 2017. The Debtor is currently \$9,981.00 in arrears on the plan payments due to the Debtor's not being able to

afford several of the items they proposed to keep in the confirmed plan. At this time, they realize they cannot afford to keep the Nissan Murano (financed through Ally Financial), and the Kawasaki Jet Skis (financed through Model Finance and one through Westlake Financial). Debtors are prepared to surrender these three items to the creditors.

4. Debtor does not anticipate this occurring again and will not fall behind on plan payments.
5. The Plan modification is necessary to make the following changes to the confirmed Plan:  
Adjust plan payment due to the arrears on the plan payments and also to surrender the items of secured property.
6. The Debtor's current budget will allow a monthly payment of \$1824.00 per month which will be sufficient to pay the debts remaining within the 41 months remaining of a 60-month plan to pay all of the secured and priority debts in full with a distribution to unsecured creditors equal to 62% of their claims. The modified base amount will be \$113,543.86, which was derived by adding the total paid in months 1-19 through August 2017 in the amount of \$38,759.86.00, plus \$74,784.00 which represents the modified payment of \$1824 x 40 months 20-60.
7. The Debtor has filed an Amended Schedule I and J contemporaneously with this motion which demonstrates that the Debtor is providing all current and anticipated disposable income to the plan and that the Debtor has the ability to continue the case as proposed.
8. The Debtors have incurred attorney fees in the amount of \$450.00 for filing this Motion to Modify, and request that these fees be paid through the plan at the rate of \$250.00 per month. The attorney fees are included in the modified plan base. This is the first request for additional attorney fees. The original benchmark fees of \$3600.00 were granted to the attorney at Confirmation and paid through Debtors' plan.

Wherefore, Debtor asks that the Court enter an Order Modifying Debtor's Confirmed Chapter 13 Plan, award attorney's fees, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Dorothy K. Lawrence  
Dorothy K. Lawrence  
Attorney for Debtors  
Texas Bar No. 24072015

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 20, 2017, a true and correct copy of the *Debtors' Response to Motion to Dismiss* was ELECTRONICALLY FILED on the following parties:

Gary Norwood, Ch. 13 Trustee  
Po Box 2331  
Midland, TX 79702

United States Trustee  
903 San Jacinto, Rm. 230  
Austin, TX 78701

and was served by FIRST CLASS MAIL, POSTAGE PREPAID,

And also upon all other parties in interest listed on the attached matrix.

Respectfully Submitted:

Dorothy Butler Law Firm  
28515 Ranch Road 12  
Dripping Springs, TX 78620  
Tel: (512) 699-5632

By: /s/ Dorothy K. Lawrence  
Dorothy Kathleen Lawrence  
State Bar No. 24072015  
Attorney for Debtors